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ABSTRACT

This booklet presents risk management strategies for organizations employing people with disabilities. First, the booklet contrasts common beliefs (such as that disabilities are obvious) with actual facts and their implications for risk management. It then discusses several risk management related exceptions in the Americans with Disabilities Act (ADA), such as the permitted exclusion of an individual if the placement would create a "direct threat" to health or safety, and reviews the ADA's relationship to public health and safety laws. General risk management strategies are identified, including the importance of careful job analysis and position descriptions prior to selecting an individual, provision of necessary training to reduce hazards, emergency preparedness, and community relations. Suggestions are offered for the following specific disabilities: mobility and other physical impairments, visual impairments, hearing impairments, cognitive impairments, and psychiatric impairments. A brief list of disability organizations is attached as is a list of risk management publications for community-serving organizations. (DB)

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Beyond the Myths about Disabilities and Risks

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Nonprofit Risk Management Center

Beyond the Myths about Disabilities and Risks

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Nonprofit Risk Management Center

The mission of the Nonprofit Risk Management Center is to meet the risk management and insurance needs of community-serving organizations through research, education, and advocacy. The Center is an independent nonprofit organization that does not sell insurance nor endorse specific insurance providers. General operating support has been received from the Ford Foundation, the Lilly Endowment, and the Mott Foundation. Liaison to the insurance industry is provided by representatives of the nation's leading insurance, risk management, and health benefits associations serving on the Center's Council of Technical Advisors.

Myths and misunderstandings about disabilities can be dangerous. Exaggerated fears may lead to unlawful rejection of a job applicant who has a disability or wrongful exclusion of an individual from your program. Assuming that everyone has the same capabilities, on the other hand, may cause you to overlook some hazards. A belief that accommodations will be too expensive or impractical can prevent the creative use of low-cost modifications that can improve safety for everyone.

Consider these possibilities. You may have a terrific training manual, but a staff member with a learning disability can't understand it. Or your emergency exit leads to a flight of stairs. Or the individual you select for a neighborhood clean-up detail has an asthmatic condition triggered by dust. Or perhaps one of your volunteers refuses to allow a person in a wheelchair to join in an activity.

Each of these situations calls for effective risk management. By dispelling myths, moving beyond stereotypes, and offering strategies and resources for maintaining safe operations, this pamphlet can help you meet your risk management responsibilities.

The pamphlet begins with the assumption that individuals with disabilities will be involved in your organization as employees, volunteers, and service recipients. Therefore, it does not dwell on your responsibilities under the Americans with Disabilities

Act or other antidiscrimination laws, except as they affect risk management. Moreover, while the focus is on individuals with disabilities, many of the suggestions will improve safety for *everyone*, regardless of disability.

MYTHS
About Individuals with Disabilities

Effectively managing risks requires replacing myths and stereotypes with sound reasoning and solid facts. This section refutes some of the most common myths about disabilities.

Myth: Individuals with disabilities comprise a small percentage of the population.

Fact: Statistics compiled by the President's Committee for the Employment of Persons With Disabilities reveal the large numbers of American citizens who have a disability. As many as 23,296,000 Americans have hearing impairments, 7,525,000 have visual impairments, 7,500,000 have mental retardation, 30,833,000 have arthritis, and 41,400,000 have psychiatric disabilities. These individuals form a tremendous pool of potential employees and volunteers, and constitute a significant percentage of the people who may seek your services.

Myth: Individuals with disabilities fall into a few distinct categories.

Fact: Disabilities are as varied as the individuals who have them. Categories of disabilities—e.g., mobility, vision, hearing, cognitive, psychiatric, and diseases or addictions—may be helpful as general guides, but dissimilarities among individuals within these categories may far exceed their common traits. Lumping together individuals with disparate disabilities would be insensitive and poor risk management.

Even individuals within the same disability category may have varying abilities, strengths and limitations. Recognizing the variations among these peoples' *abilities* is the first step in designing facilities and procedures that are suitable for *everyone*.

Myth: Disabilities are obvious.

Fact: Although some disabilities are readily apparent, others are not. You may be unaware that a person is HIV positive, has dyslexia, or is subject to seizures. Some individuals are willing to disclose the nature of their disability, while others, for various reasons, are not. Consequently, effective risk management may require the use of procedures that assure safety despite uncertainty about an individual's condition. For example, emergency medical teams take precautions to prevent the spread of contagious diseases every time they encounter blood. Such precautions guarantee safety without the need to inquire into an individual's health status.

Myth: Individuals with disabilities pose a higher risk and suffer more accidents than those without disabilities.

Fact: A 1990 study by the E.I. DuPont Company that assessed the safety records of employees with disabilities found that 97% rated average or above average in safety. Similarly, a Marriott International, Inc., study revealed that the 6% of self-identified workers with disabilities had safety records that equaled or exceeded their nondisabled peers. Another study published in 1993 by Peter Blanck with the Annenberg Washington Program found that 93% of the Oklahoma employers surveyed reported that employees with mental retardation do not create a safety risk in the workplace.

Myth: Laws that protect individuals with disabilities are incompatible with effective risk management.

Fact: The Americans with Disabilities Act (ADA) and similar antidiscrimination laws may limit your risk management options, but they are not a barrier to safety. The principal effect of antidiscrimination laws on risk management is to require the use of risk reduction measures that are more sensitive—and sensible—than the exclusion of people with disabilities from your staff or premises.

The ADA itself contains several risk management-related exceptions. Most significantly, the ADA em-

ployment regulations, under the jurisdiction of the Equal Employment Opportunity Commission (EEOC), permit exclusion of an individual if the placement would create a "direct threat" to health or safety.

The "direct threat" exception is a narrow one. It must involve a current, significant, imminent risk of substantial harm to the health or safety of the individual or others that cannot be eliminated through reasonable accommodation. Assumptions and stereotypes are not enough. The determination must be based on an individualized assessment of objective medical or factual evidence.

An individual must not be rejected merely because of concerns about potential harm. An applicant with schizophrenia, for example, should not be rejected based upon the misapprehension that all such individuals are dangerous to themselves or to others. Does the individual have a history of violence or violent threats? Does a psychiatric assessment support a prediction of violence? These questions can provide a concrete basis for decision.

Furthermore, the ADA does not override public health and safety laws. Thus, for example, U.S. Department of Transportation regulations that exclude persons with epilepsy and certain other conditions from driving vehicles in interstate commerce may justify rejection of applicants from positions that require driving. Similarly, the EEOC has directed the U.S. Department of Health and Human Services (HHS) to prepare an annual list of contagious diseases that are transmitted through the handling of food. You need not allow a person infected with one of the listed diseases to handle foods. You may, however, need to make reasonable accommodation to remove the food handling risk, or, if no accommodation can be found, to place the employee in a job that does not require food handling responsibilities.

In addition, the protections of the ADA do not extend to conditions that are sometimes mistakenly thought to be within its scope. Kleptomania, pyromania, and pedophilia, for example, are specifically excluded.

Individuals who are currently using illegal drugs are not protected, although successfully rehabilitated drug addicts are protected. You may be permitted to use drug testing to reveal current illegal drug use among applicants and employees. Alcoholism is protected unless it interferes with a person's ability to work or poses a direct threat to the property or safety of others.

To limit the potential for discrimination against individuals entitled to its protection, the ADA prohibits certain questions of job applicants. It specifically forbids employers from asking applicants about a disability. Questions must be directed at the applicant's ability to perform the essential tasks of the position, with or without reasonable accommodation.

Specifically, the ADA permits you to ask applicants to describe or to demonstrate how they would perform the essential functions of a position. If, for example, you need to hire an individual to transport heavy food platters to and from the kitchen of a homeless shelter, you would not be allowed to ask applicants about past back injuries. You could, however, ask applicants to demonstrate their ability to lift and transport the platters or to describe how they would do it, with or without a reasonable accommodation.

An adequate understanding of your legal rights and responsibilities under both federal and state laws will allow your organization to develop an effective risk management plan that complies with even the strictest of the antidiscrimination statutes.

General Risk Management Strategies

Risk management is an ongoing process. It should start well before you even meet an applicant for a position or offer a service. Risk management should have a role in the way you describe your positions, recruit your personnel, train your staff, and interact with both personnel and the public on a daily basis.

The following general strategies can be adapted for almost any program and type of disability. (Additional risk management pointers for all types of individuals are available in *No Surprises: Controlling Risks in Volunteer Programs* from the Nonprofit Risk Management Center.)

Selecting the Right Person

One of the most important steps in the risk management process takes place before the applicant ever enters your door. To control risks, you must have a clear understanding of what the duties of a position will be and then must match applicants with tasks appropriate for their experience, abilities and temperament.

To create the correct match, you must first analyze the essential functions of a particular position. How is the job performed? What methods, techniques and tools can be used to accomplish the tasks? How much time is necessary to complete the tasks required? Why and where is the task performed? What happens if the task is done wrong or is not completed in time? What aptitudes, knowledge and/or skills are necessary? How much physical, mental and/or emotional exertion is required? What are the environmental conditions?

As a general rule, develop position descriptions based on what you want from the applicant rather than on what you are trying to avoid. Once you have answered these questions, you can prepare a written (or otherwise standardized) position description that can help assure that applicants are not rejected for impermissible reasons.

If, for example, you wish to place volunteers on a rape crisis hotline, your written description of the position responsibilities might include telephone communication, precise record keeping, the potential for long telephone sessions without breaks, and high-stress interaction with callers. Once informed of the requirements, an applicant who believes high stress may aggravate a psychiatric illness may decline to accept a position. Another applicant who may be unable to sit for long periods without aggravating a

back injury may have suggestions for modifying the work site. Offering this clear understanding of the components of the position could protect the physical and emotional health of both the volunteer and the potential callers.

Proper placement also requires adequate investigation into the applicant's employment history and general experiences. As part of the selection process, background checks should be performed for sensitive positions, such as those having contact with children. (For further guidance, see *Staff Screening Tool Kit: Keeping the Bad Apples Out of Your Organization*, from the Nonprofit Risk Management Center.) A check may reveal a legitimate basis for disqualifying a person, regardless of disability. In addition, conducting a background check may give you a basis for managing any risks you identify, perhaps by adding supervision, reassigning the individual, or making other arrangements.

Reducing Hazards

Most work, paid or volunteer, can be hazardous without proper training or safeguards. Assignments may place your staff in dangerous neighborhoods, near hazardous equipment, or simply in situations where ordinary accidents can occur. Basic risk management requires that you train your personnel to properly and safely complete their tasks, and to handle accidents and emergencies. A crucial factor when dealing with individuals of *all abilities* is to ensure that each person receives and understands the training. A few simple steps will aid you in communicating the essential facts to those with cognitive, visual and auditory impairments as well as to all others.

- Instructions should be provided in verbal, written, and pictorial formats.
- Training should be interactive, using lots of examples and discussion.
- Instructions should be demonstrated as well as described.

- Trainees should be asked to explain and/or to demonstrate what they have been taught.
- New staff members should be paired with experienced individuals until they learn to handle the position independently.
- New personnel should be asked to role play for problem solving.

Emergencies

Risk management requires special attention to the needs of individuals with disabilities during emergencies. Make sure that you have an emergency and evacuation plan that can be carried out by everyone on your premises. Analyze your alarm system. Will it alert those with hearing or visual disabilities? Will the sudden noises or flashing lights trigger reactions in seizure-prone individuals? Will individuals with cognitive disabilities be able to safely and quickly find the path to the nearest exit in an emergency such as a fire or earthquake?

Many individuals with disabilities will benefit from an established emergency buddy system, where each individual with a disability is paired with a non-disabled individual for the purpose of evacuation. Also, drills to reinforce emergency procedures will justify the time and effort. The *Workplace Workbook 2.0, An Illustrated Guide to Workplace Accommodation and Technology*, by James Mueller, published for the Dole Foundation by HRD Press, Amherst, Massachusetts, specifically recommends informing your local fire/rescue staff and your building's internal security force of any special assistance needs required by your personnel.

Community Relations

Perhaps the most fundamental risk management tool is also the easiest to employ. Courteous, understanding, and interactive relations and dialogue among your staff and the community you serve will reduce if not eliminate the risk of legal action if an accident occurs. Take seriously suggestions offered by individu-

als with disabilities, since often they are the best experts as to how to make the workplace safe. Involve your community and your nondisabled staff as well, and make sure they have input in how to make your organization a safe place in which to work.

Risk Management Suggestions for Specific Disabilities

The following suggestions provide a basis for developing risk management measures that are appropriate for people with various types of impairments.

Mobility and Other Physical Impairments

- Keep first aid kits and other safety items where individuals in wheelchairs can reach them.
- Make entrance and exit door pressure light enough so that an individual in a wheelchair can get out.
- Assure that door handles can be operated with a closed fist to ensure ease of operation.
- Place signs for entrances, exits, warnings, etc., low enough for an individual in a wheelchair to see (but not so low as to pose a hazard for the visually impaired, see below).
- In emergency evacuation procedures, allow those with mobility impairments, as well as those with visual impairments, to use elevators whenever possible.
- Where elevators may not be used in an emergency, arrange back-up procedures to ensure swift evacuation of individuals with mobility impairments.

Visual Impairments

- Provide communications to individuals with visual impairments in forms other than Braille. (Only 7% of the visually impaired population is proficient in Braille.) Safety procedures and other critical training should be provided by audio cassettes or by a reader in addition to or in place of in Braille. Large print materials may be suitable for individuals with partial sight.
- Make touch identifiers for doors leading to hazardous spaces. Knurl or rough the doorknobs or apply

material or tape to contact surfaces to alert the visually impaired to the potential hazard. Alert your staff to these cues.

- Cover all holes and floor access panels.
- Make sure that signs, fixtures, or cantilevered building elements are not hung so low that people can hit their heads on them (but low enough to be readable from a wheelchair, see above).
- Make exit and other signs distinct, with large print, high contrast colors and pictures for those with only partial sight.
- Place fire extinguishers and wall telephones in recessed areas so they do not protrude into walk ways.
- Place detectable warning fixtures on walking surfaces to warn persons with visual impairments that they are close to hazardous areas, such as the tops of stairs.
- Wrap hot water pipes in rest rooms and kitchens with tape to avoid burns.
- Place coat hooks in areas where they will not pose a hazard.

Hearing Impairments

- Make sure alarm systems provide visual as well as audible signals (e.g., flashing lights).
- Provide safety training in written form or on captioned video.

- Allow lip readers to sit up front during training sessions, with unobstructed views of the speaker.
- Provide sign interpreters and assistive listening systems as needed for training sessions or meetings.

Cognitive Impairments (Mental Retardation, Brain Injury, Learning Disabilities, etc.)

- Make use of caution, warning, emergency and storage labels that are large, brightly colored and displayed in symbols instead of or in addition to words. Complement these measures with adequate training so that all personnel understand the meaning of various "cues," labels, landmarks, etc.

- Establish a clear system for the organization of supplies and materials and avoid frequent reorganization.
- Mark hazardous materials with yellow and black warning strips.
- Minimize clutter, noise and other distractions.
- Avoid isolated work stations.
- Do not assign jobs that require very rapid reaction time.
- Use varying architectural materials and styles so that spaces do not all look the same and so that landmarks are easier to identify in an emergency.
- Mark emergency equipment and evacuation routes conspicuously.
- Use a buddy system for evacuation of the premises in an emergency.
- Demonstrate emergency procedures and have staff members demonstrate their understanding.

Psychiatric Impairments

- Allow frequent breaks from tasks.
- Arrange breaks according to needs of the individual, not on a regular, predetermined schedule.
- Create personal space with minimum noise and distraction.
- Use job coaches, mentors and a buddy system.
- Offer low stress assignments (but do not assume that an individual with a psychiatric disability cannot tolerate stress).

These are but a few tips to help you make your premises and operations safe for people with and without disabilities. Additional ideas may come from other sources, including staff members and people who receive your services. Moving beyond the myths about disabilities and risk can enable you to maintain premises and programs that are safe for all.

Disability Organization Resource List

The Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507
800-669-4000 (questions) (voice)
800-669-EEOC (publications) (voice)
800-800-3302 (publications) (TDD)

ILR Program on Employment and Disability
Cornell University
102 ILR Extension
Garden Avenue
Ithaca, New York 14853-3901
607-255-7727 (Voice)
607-255-2891 (TDD)

Job Accommodation Network (JAN)
West Virginia University
918 Chestnut Ridge Road Suite #1
Morgantown, WV 26506
800-526-7234 (voice and TDD)

President's Committee on Employment of People With Disabilities
1331 F. Street N.W., Third Floor
Washington, D.C. 20004-1107
202-376-6200 (voice)
202-376-6205 (TDD)

A more extensive list of several dozen organizations that provide information regarding disabilities is available. You can download the list electronically as indicated below, or send a self-addressed, stamped envelope to the Nonprofit Risk Management Center, 1001 Connecticut Avenue, N.W., Suite 900, Washington, D. C. 20036.

Internet. The list is available from the Corporation for National and Community Service's Internet site. To receive instructions for transfer through E-Mail, gopher, and anonymous file transfer protocol (FTP), send a blank E-mail message to cncs@ace.esusda.gov. The message should have no text in the subject or body.

HandsNet. Users of HandsNet electronic information service can download the Disability Organization Resource List from the Nonprofit Risk Management Center's folder. The path is Resources/NP Risk Mgmnt Center/Other Tools.

Risk Management Publications for Community-Serving Organizations

No Surprises: Controlling Risks in Volunteer Programs, 1993, 60 pages, $9.95. This popular handbook offers strategies for protecting your organization, staff, and the community you serve from injuries, lawsuits, and other unwanted surprises.

Staff Screening Tool Kit: Keeping the Bad Apples Out of Your Organization, 1994, $15.00. Step-by-step guidance and sample forms for screening applicants to work with children and other vulnerable populations, handle money, or fill any sensitive positions.

Child Abuse Prevention Primer for Your Organization, 1995, 88 pages, $12.00. The facts you need about abuse and abusers, together with suggested resources for protecting the children in your programs.

Am I Covered for . . .?: A Guide to Insurance for Non-Profits (2d ed.), 1992, 285 pages, $15.00. The most complete and up-to-date handbook on insurance purchasing for nonprofits.

Guidebook for Directors of Nonprofit Corporations, 1992, 118 pages, $19.95. A layperson's guide from the American Bar Association for every board that wants to protect itself from lawsuits.

D & O—Yes or No? 1994, 20 pages, $6.00. Clear analysis of the major considerations for deciding whether to purchase directors and officers insurance and, if so, which policy to select.

Volunteers with Disabilities pamphlet.
Sets of 10—$5.00; Sets of 100—$35.00

To order, please include $3.00 shipping and handling for the first item plus $.50 for each additional item, $6.00 maximum. Send order and payment or purchase order to:

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